

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In The Matter Of:

**CARRIER TRANSPORT, INC.,
(U. S. DOT No. 1463783)**

Petitioner

**Docket No. FMCSA-2010-0031
(Southern Service Center)**

DECISION ON PETITION FOR REVIEW OF SAFETY RATING

1. Background

By letter dated January 15, 2010, Carrier Transport, Inc. (Petitioner) requested administrative review of a conditional safety rating pursuant to 49 CFR 385.17.¹ The conditional rating was assigned following a compliance review of Petitioner completed on February 25, 2009.

The procedures for assigning a safety rating at the conclusion of a compliance review are set out in Appendix B to part 385. As pertinent, ratings are assigned for each of six factors, if applicable. The ratings for these individual factors then determine a carrier's overall safety rating according to a Safety Rating Table.²

The ratings for factors one through five are assigned based on violations of acute regulations and patterns of noncompliance with critical regulations.³ A pattern of

¹ The petition is actually a request to review a denial of a safety rating upgrade request based on corrective action and, consequently, was filed pursuant to 49 CFR 385.15. See 49 CFR 385.17(j).

² Appendix B to 49 CFR part 385, section III. A.(b).

³ These regulations are identified in Appendix B to 49 CFR part 385, section VII. However, the initial rating for the vehicle rating factor will be conditional if the carrier has a vehicle out of service rate exceeding 34% based on three or more roadside inspections during the 12 months preceding the compliance review.

noncompliance with a critical regulation exists when the number of violations equals 10 percent or more of the instances examined.⁴ The rating for factor six, recordable accident rate, is determined by the number of recordable crashes per million vehicle miles traveled by the carrier.

A carrier is assessed one point for each violation of an acute regulation or each pattern of noncompliance with a critical regulation.⁵ The carrier will be rated unsatisfactory in a rating factor if the acute and/or critical violations for that factor total two or more points. It will be rated conditional in a factor if the acute and/or critical violations equal one point.⁶ Under the Safety Rating Table, an unsatisfactory rating in any single rating factor will result in an overall conditional rating, even if the carrier is rated satisfactory in all other applicable factors.

Petitioner's conditional safety rating resulted from an unsatisfactory rating for rating factor two (driver).⁷ It was assessed two points for this factor based upon patterns of noncompliance with two critical regulations: (1) 49 CFR 382.305(b)(1), failing to conduct random alcohol testing at the prescribed annual rate; and (2) 49 CFR 382.305(b)(2), failing to conduct random controlled substances testing at the prescribed annual rate. Based on the 13 drivers reported in the compliance review report and the number of violations cited—two for alcohol testing and seven for controlled substances

⁴ To constitute a pattern, however, there must be more than one violation of a critical regulation. See Appendix B to 49 CFR part 385, section II.(g).

⁵ However, patterns of noncompliance with critical regulations in 49 CFR part 395 are assessed two points, in accordance with Appendix B to 49 CFR part 385, section II. (h).

⁶ Except as noted in Footnote 3.

⁷ Although Petitioner did not submit a copy of the compliance review report with its petition, a copy was obtained from the Agency's Electronic Document Management System and pertinent parts of the document have been placed in the docket.

testing—it appears that Petitioner conducted no random alcohol and controlled substances testing in 2008.⁸

Petitioner's request for a change in safety rating based on corrective action pursuant to § 385.17 was denied by the Field Administrator for the Southern Service Center, Federal Motor Carrier Safety Administration on December 31, 2009. Records obtained from the Agency's Electronic Document Management System indicate that Petitioner's upgrade request was made on July 21, 2009, and attached records relating to random controlled substances and alcohol testing conducted in April and July 2009.⁹ A total of six drivers were tested for controlled substances and one driver was tested for alcohol.¹⁰ The Field Administrator denied Petitioner's upgrade request because the number of tests conducted did not meet the required testing rates for 2009 based on Petitioner's average number of driver positions. Petitioner was invited to submit another request for a change in safety rating providing additional documentation that testing was done at the applicable annual rates.

Petitioner contended that the Field Administrator erred in denying the July 2009 upgrade request because the company actually employed 11 drivers instead of 13.¹¹

⁸ Under § 382.305(b), Petitioner was required to randomly test 10% of its drivers for alcohol and 50% of its drivers for controlled substances. Therefore, it should have tested two drivers for alcohol and seven drivers for controlled substances.

⁹ Copies of these documents have been placed in the docket.

¹⁰ Although seven drivers were selected for random controlled substances testing, Petitioner stated that one of the drivers resigned before he could be tested. However, Respondent's compliance is measured by how many drivers were tested, not how many were selected.

¹¹ Based on 11 drivers, Petitioner would have met the 50% standard for random controlled substances testing, but not the 10% standard for random alcohol testing.

Petitioner's request for administrative review also provided documentation that five additional random controlled substances tests and two additional random alcohol tests were conducted in October, November and December 2009.

2. Decision

Although Petitioner claimed that the Field Administrator erred in basing his calculation of the applicable testing rate on 13 rather than 11 drivers, Petitioner's July 2009 upgrade request did not indicate that Petitioner employed two less drivers in 2009 than it did in 2008. Moreover, the number of drivers who must be tested is based on the average number of drivers employed by the motor carrier throughout the entire year.¹² Consequently, the average number of drivers employed by Petitioner in 2009 would not be known in July 2009.

If Petitioner employed an average of 11 drivers eligible for testing in 2009, it should document this fact and resubmit the testing information to the Field Administrator as part of a renewed request for a change in safety rating, as suggested in the Field Administrator's letter of December 31, 2009.

Because Petitioner has not documented any error or abuse of discretion by the Field Administrator in denying its request for a change in safety rating based on corrective action, Petitioner's request to upgrade its safety rating to satisfactory is denied.

It Is So Ordered.


Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

2.17.10
Date

¹² See 49 CFR 382.305(j)(1).

CERTIFICATE OF SERVICE

This is to certify that on this 18 day of February, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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